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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,261	12/20/2001	Jeffrey E. Fish	KCX-482 (16683)	8928
22827	7590	04/19/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			RAYFORD, SANDRA M	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 04/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/027,261

Applicant(s)

FISH ET AL.

Examiner

Sandra M. Nolan-Rayford

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-31 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-31 and 42-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12-6-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on 06 December 2004 has been entered.

### ***Claims***

2. Claims 1, 3-31 and 42-45 are pending. Their text is that contained in the 22 October 2004 (eDAN/IFW date) communication from applicants.

### ***Request for Corrected Captioned Set of Claims***

3. It is requested that applicants submit, with their response to this action, a set of claims bearing correct captions.

### ***Withdrawal of Allowance***

4. The allowance of claims 1, 3-31 and 42-45 is withdrawn in order to apply the new rejection set out below.

### ***Drawings***

5. The replacement drawings for Figures 3 and 4 were received on 01 December 2004. These drawings. Along with the original Figures 1 and 2, are acceptable.

***Information Disclosure Statement***

6. The information disclosure statements (IDS's) recorded in eDAN/IFW on 06 December 2004 were considered by the examiner.

Please see the examiner's notation(s) on the citation sheets.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1, 3-31 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowen (US 5,792,213) in view of Gerhard (DE40055718).

Gerhard was cited in one the IDS's mentioned above.

Bowen is discussed on page 4 of the 20 October 2003 office action.

It fails to teach wrappers.

Gerhard shows an elastic (line 2 of abstract) bandage for treating sprains or bruises (lines 1-2 of abstract) that is a strip having pockets (shown in Figures 1 and 2),

Art Unit: 1772

The strip can be applied to body parts for treatment (lines 8-9 of the abstract). The walls of its pockets are made of woven yarn (lines 10-12 of abstract).

It is well known that strip-type bandages can be wrapped around body parts.

The references are analogous because they all deal with devices for treating the body via temperature change.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the strip configuration, elastic, woven outer layers, and pockets of Gerhard's bandage in applying Bowen's therapy pack to body parts in order to facilitate wrapping the bandage around the body part to be treated.

The motivation to use the strip configuration, elastic, woven outer layers, and pockets of Gerhard's bandage in Bowen's therapy pack is based on the Gerhard abstract and in the well-known wrappability of strip bandages.

It is deemed desirable to apply heat or cold to body parts using bandages that can be wrapped around the affected part so that the bandages stay in place.

The various functional features of applicants' dependent claims are deemed obvious modification to optimize the performance of the therapy packs/strips suggested by the combined references.


### ***Conclusion***

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

Art Unit: 1772

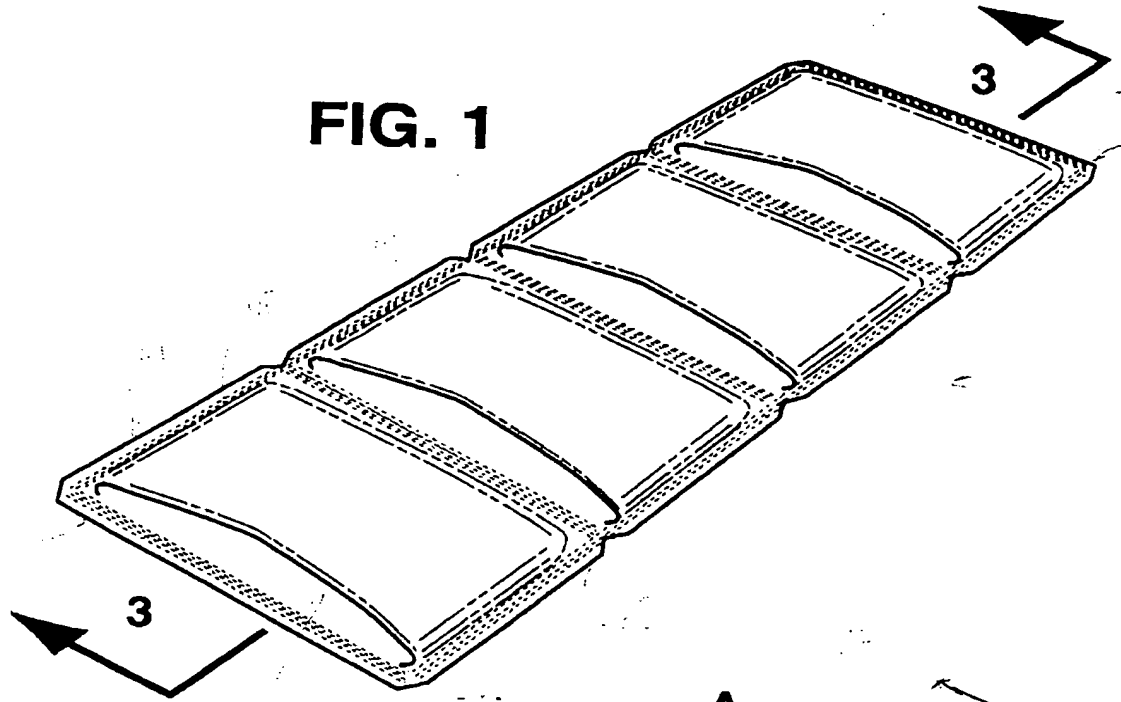
If attempts to reach the examiner are unsuccessful, contact her supervisor,  
Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

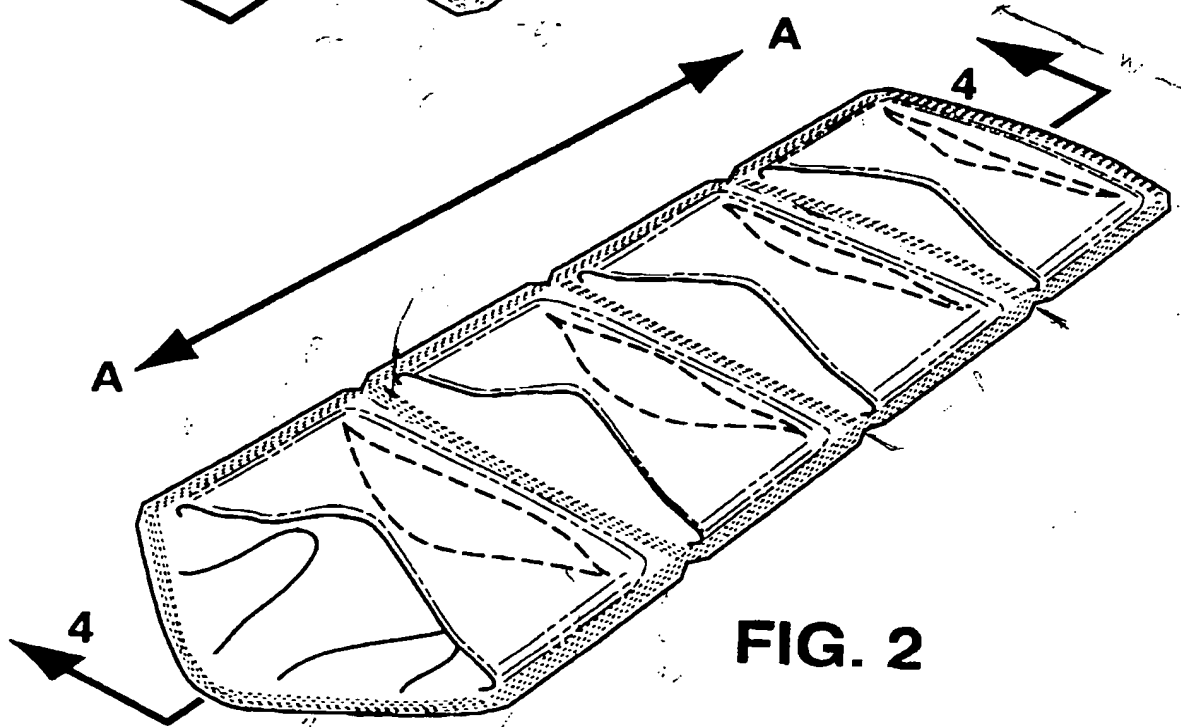
  
S. M. Nolan-Rayford  
Primary Examiner  
Technology Center 1700

10027261(20050415)

**FIG. 1**



**FIG. 2**



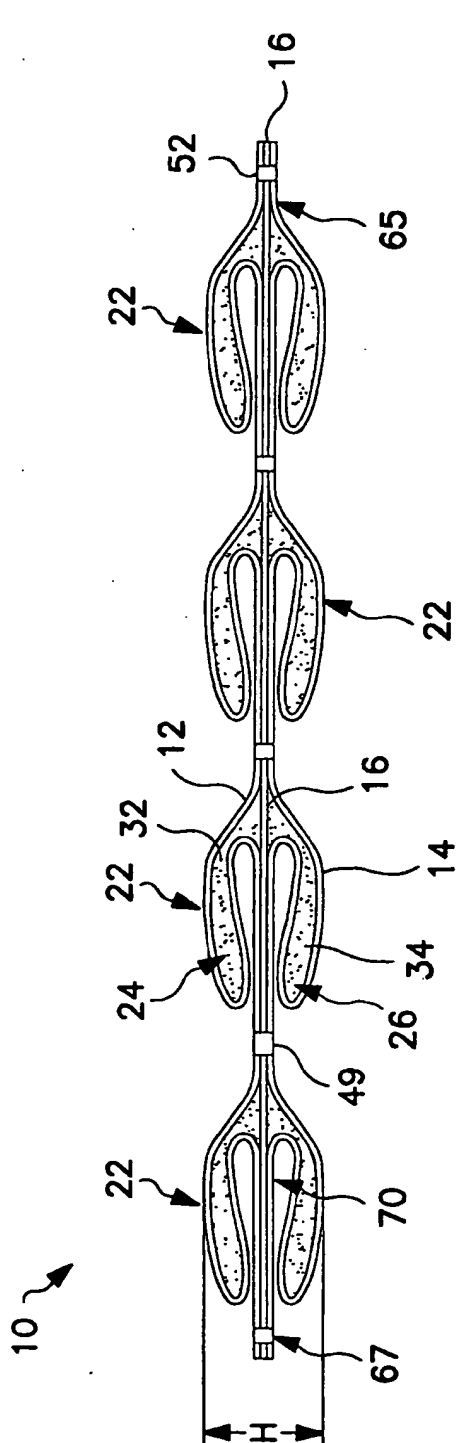


FIG. 3

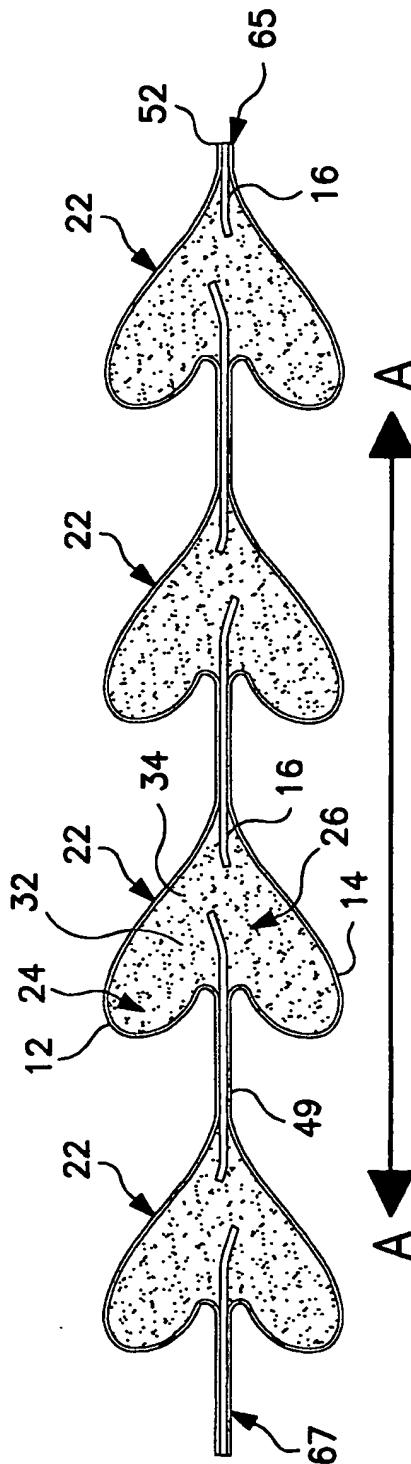


FIG. 4